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8-26/3

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(S U B J E C T.)

A1012

Ref.A.3-No.196-32.

South Kanara Collector's Office,
Mangalore, dated 16th March '32.

From

Khan Bahadur J. Hussain, Bar-at-law,
Collector of South Kanara.

The Secretary to the Board
Land Revenue and Settlement,

M a d r a s.

Sir,

Suits - Mangalore - Dt.Munsif's Court - C.S.No.32/32-
Blocking up road-way in T.S.No.55 (Rev.S.No.607) of
Mangalore Casba Bazaar village.

Sp 5 = 96 lines
In enclosing a copy of the plaint in the above suit which is for a decree for permanent injunction, restraining Government and all persons claiming under them from obstructing the plaintiffs and their men in their use of the roadway S.No. 607. (T.S.No. 55) and from blocking it up in any manner, I beg to report as follows:-

2. In 1927, when the question of the extension of the Women and Children's Hospital at Mangalore was in hand, it was proposed that the then existing road in T.S.Nos. 52 and 55 of Central Ward, Mangalore Municipality should be closed and the site made ~~(made)~~ over to the Hospital authorities to be added on to the hospital compound and in its place a new road opened on the western extremity of the lands then proposed to be acquired. In their petition dated 14-9-27, the present plaintiffs objected to this proposal, but Mr. Gawne simply remarked that it would only be necessary to keep open the road as far north as the double pencil line, when he had then drawn on the sketch. The sketch referred to by him is not now among the records, but the note dated 28-9-27 will make it clear that what he meant was that the road should be kept open up to the wicket gate of Messrs. Pais and Sons' compound. Mr. Gawne did not, however, come to a definite conclusion, but before arriving at a decision, he wanted to have a meeting of the Hospital

R.Ms.file 4126-27
pages 147 & 148 c.f.

(B)

- do -

page 22 n.f. (B)

- do -

page 25 n.f. (B)

- do -

page 25 n.f. (B)

2

Extension Fund Committee, of which he was the President. No such meeting was subsequently held and no formal orders were issued. Later the two fields, T.S.Nos. 52 and 55, were, however, withdrawn from the control of the Mangalore Municipal Council and made over to the Hospital authorities, who enclosed only the portion to the North of the Wicket gate, leaving the Southern portion now marked 55/B, in the Shanbhogue's sketch dated ---- 20-1-32, vacant.

R.Dis.file
10174-27
page 89 c.f.
- do -
page 94.

p11(E)

3. Early in May last, the plaintiffs fearing that the Hospital authorities might block up the pathway, approached me with a petition and after inspecting the locality, I ordered a strip of land about 12 feet wide should be left next to their compound and the rest enclosed by the Hospital authorities. Subsequently, however, the Dt. Medical Officer happened to discuss the matter with me and also sent me a letter explaining the circumstances. On further consideration, I cancelled the previous order. Thereupon, the plaintiffs sent me a suit notice, which on the face of it seemed premature and out of place and was therefore recorded. In January last, the hospital authorities began to store materials for the construction of a wall enclosing the land to the South of the Hospital Compound and the plaintiffs sent me another petition which was soon followed by the present suit.

D.Dis.4805-31
pages 1 & 3
c.f. (F)

- do -
page 1 n.f.
p19(F)

- do -
page 21 c.f.

- do -
page 25 c.f.

- do -
page 2

D.Dis 7017-3
pages 1 to 7
c.f.

(G) c.f.
p1-2 y(G)

2 numbered

4. I enclose, in original, the papers of enquiry (pages 33 to 44) together with a copy of the Mangalore Government Pleader's letter Ref.No.1/32 dated 8-3-32. As stated by the Revenue Inspector, in his report dated 28-1-32, the plot in question stands registered as road poramboke from the date of the last settlement. It is not known from what date, the road actually existed, but it is a fact that there existed a roadway on the land till it was withdrawn from the control of the Municipal Council and made over to the Hospital authorities. No doubt, as stated by the Government Pleader, the present buildings and in the plan dated 20-1-32 are reported to have been constructed somewhere in 1901 or so, but it cannot be denied that before the construction of these there existed no other buildings on the site. On the other hand, the reports of the

13-4-15-18
51-52 and 65 to 68 c.f.)

(E)

p17-18 b

p15(E)
para 2

p11(E)

p14(E)

Revenue Inspector and the Tahsildar, dated 14-3-32 show that there existed on this site other old buildings, but there is evidence to show that the particular road in question did exist at that time or that it was used by the occupiers of the buildings. There is already an entrance marked G (in the sketch dated 20-1-32) which is a private land leading not only to the building marked C, D and E, but also to A & B. The Dt. Medical Officer, whom I have consulted, is entirely for the defence of the suit and says that the construction of the wall need not be stopped, as a portion thereof can be demolished later, if the plaintiffs prove their case - please see his letter Ref.No. 664-2/32 dated 28-1-32 (copy enclosed). In these circumstances, I agree with the Government Pleader in his opinion that it is for the plaintiffs to prove this case and therefore recommend that the defence of the suit may be sanctioned and the enclosed draft written statement prepared by the Government Pleader approved.

5. The Dt. Munsif has passed an interim injunction order (copy enclosed). Agreeably to this order, the work of the construction of the wall has been stopped. I enclose a copy of the application for temporary injunction as also that of the affidavit, received by me from the Government Pleader today and request the enclosed draft counter may be approved.

6. The plaint is dated 31-1-32. A copy of the plaint together with the summons and the temporary injunction order was received by me on 3-2-32. The suit stands posted to 13-6-32, but the petition for temporary injunction is posted to 1-4-32. Though there is ample time for the filing of the written statement in the suit, very little time has been allowed for the filing of the counter in the application for temporary injunction. I therefore request that early orders may be passed in this case. The records noted in the margin are enclosed for reference.

A. K. Chaudhary 1732

For Collector.

17.3.32

p 18 (E)

p 11 (E)

p 15 below

p 17-18 below

p 24-25 below

p 13 below

p 19 (E)

p 21-24 (E)

p 19-20 below

Collector's R.Dis.
4126-27.
" 10174-27.
" D.Dis.4805-31.
" D.Dis.7017-31.

5

In the Court of the District Munsif of Mangalore.

O.S.No.32/1932.

Between

1. Mrs. Annie Pais	}	Plaintiffs.
2. Miss Julia Pais		

and

The Secretary of State for India in) Council represented by the -----) Collector of South Kanara.	Defendant.
---	------------

Plaint under Section 26, Order VII C.P.C.

The plaintiff abovenamed states as follows:-

1. The 1st plaintiff is the widow and the 2nd plaintiff is the daughter of the late Mr. Martin Pais and are the owners of "Messrs. M. Pais & Sons", Mangalore. They reside at "Coronation Gardens", in Kodialbail village, Mangalore Town, which is their address for service of all notices and process.

2. The defendant is the Secretary of State for India in Council and is represented by the Collector of South ----- Kanara.

3. 1) The plaintiffs are the Executrices of the Will of the late Mr. Martin Pais and sue in that capacity.

2) S.F.No.623 of Kasba Bazaar village, Mangalore Town, corresponding to T.S.No.39 of old Central III Ward of the Municipality of Mangalore with the buildings thereon ---- belongs to the estate of the late Mr. Martin Pais and the --- same is now vested in the plaintiffs as executrices of his Will.

3) The said land formed the subject matter of a --- grant made Colonel Williamson to one Nicholas D'Souza who was a shopkeeper on 14-2-1842, and it was registered in his name as warg No:146. The said plot has ever since the date of the grant contained buildings which have all along been used for residential and for trading purposes. The last ----- holder of the land was the late Mr. Martin Pais, husband of

the 1st plaintiff and father of the 2nd plaintiff and the said land even at present contains both shop ----- buildings and residential quarters.

4) On the east of the said plot of land lies S.F.No.607 of the said village corresponding to T.S.No. 55 of the III Ward which is a poramboke public road and the said road has all along been used as such from time immemorial both by the public as well as by the plaintiffs and their predecessors-in-title, and by their tenants and servants as a roadway to secure access to the said land and to the buildings thereon. In particular the said roadway has all along been used by the plaintiffs and their predecessors-in-title to cart materials stores etc. to the shop buildings and godowns on the plaintiffs land and also to go to the tenants houses standing in the said plot of land. The said roadway has also been used by the plaintiffs' servants to go to the back portion of their premises to open and close daily the doors of their shop buildings and godowns and also by their coolies for the purpose of making periodical repairs to their said buildings.

5) By such use and by the very fact that S.F.No.607 have all along been a public roadway. the plaintiffs have acquired a right to use the said S.F.No.607 as a roadway to their property S.F.No.623 not only for access to it but also to use the roadway for carting materials, and stores to their shop buildings and godowns and tenants' houses by grant implied from long and immemorial user. The said roadway has always been used by the plaintiffs and their predecessors-in-title for the purposes aforesaid as of right, openly and without any interruption from defendant or from any one else and continuously for more than the prescriptive period of sixty years and the plaintiffs have thereby acquired a prescriptive right for the said road as against the defendant and all persons claiming under or through him. The

plaintiffs have also acquired an easement of necessity over it for the purpose of making repairs to their buildings, to open and close their shops and godown buildings, to cart materials and stores to their godowns and also to go to the residential quarters situated in the back portion of the land of the plaintiffs, there being no other way for these purposes, and the plaintiffs' gateway which is an ancient one, being situated on the back of the plaintiffs' main buildings and opening into the said road.

6) When consequent on the extension of the Women and Children's Hospital in 1927 it was proposed to close the said roadway leading to the plaintiffs' land and buildings, the plaintiffs promptly asserted their rights to the roadway in the same way as they did on a previous occasion when there was a proposal to close the said road and open another further west of the plaintiffs' property and the proposal to close the roadway was dropped by the defendant and the existing wall marked D3 in the plan filed herewith of the hospital compound was put up leaving the roadway as far as it was necessary for ingress to and egress from the plaintiffs' land and buildings intact. The said roadway was also re-demarcated by planting and marking the survey stones.

7) The plaintiffs learn that the Municipality has without obtaining the previous sanction of the local Government recently made over the said roadway S.F.No.607 leading to the plaintiffs' land and buildings to defendant for the purpose of the aforesaid hospital but the ownership of the land continues to vest in the defendant on the strength of the said handing over to the Hospital Extension Scheme the defendant while enclosing by a stone wall the adjacent land of the hospital extension intends to add the said roadway S.F.No.607 to the hospital grounds and to block the roadway itself at the place where it joins the main public road by putting up a stone wall at the entrance. Preparations for this construction are being briskly made by collecting materials etc. The said making over of the roadway to the

hospital even if made with the sanction of the local --- Government cannot and does not affect the rights of the plaintiffs to the said roadway!

8) On a petition made by the plaintiffs to the Collector of the District on 9-5-1931, urging their ---- claims to the roadway in question; the Collector by his order dated 10-6-1931 directed that a strip of land ---- measuring 12 feet broad should be reserved for the use of the plaintiffs (the road measures about 22 feet in breadth). but that order was cancelled by the same Officer by another order dated 17-6-1931 without giving any ---- reasons for his action.

9) The petitioners thereupon by a petition dated 15-7-1931 requested the Collector to reconsider his decision, intimating that Officer that if plaintiffs' request for retention of the old roadway could not be granted, the said petition should be treated as notice of the suit under Section 80 of the Civil Procedure Code. The Collector has not heeded the said notice and a subsequent reminder dated 6-1-1932 has also been in vain. The said notice dated 15-7-1931 was delivered to the Collector on 15-7-1931 at his office in Mangalore.

10) The said blocking causes particular, direct and substantial damage to the plaintiffs and their tenants apart from inconvenience that may be caused to the public. The denial of the plaintiffs' right and the proposed blocking of the roadway is wrongful and tortious.

11) The cause of action for the suit arose in Kasba Bazaar village Mangalore Town on 17-6-1931 when the plaintiffs' rights were denied by the defendant.

4. The plaintiffs value the relief sought for at Rs.100 for purposes of jurisdiction and court fees.

5. The plaintiffs pray for a decree against the

defendant for the following reliefs:-

Rs. A. F

1) Permanent injunction restraining the defendant and all persons claiming through or under him from obstructing the plaintiffs, their men, servants, tenants, in any manner in their use of the roadway S.F.No.607 for the benefit of their land S.F.No.623 the shop buildings and the godowns and the residential buildings ----- thereon and from blocking the said roadway in - any manner. This relief is valued at Rs. 100- 0- 0

2) Directing the defendant to pay the costs of ----- plaintiffs.

3) And for such other and further reliefs as to this Court may seem fit under the circumstances of the case.

M a n g a l o r e,
31st January 1932.

Signed by plaintiffs
Plaintiffs.

We, the plaintiffs abovenamed, declare that what is stated above is true to our knowledge.

M a n g a l o r e,
31st January 1932.

Signed by plaintiffs.
Plaintiffs.

(True Copy)

(Sd.) P. D'Souza,
Vakil for Plaintiffs.

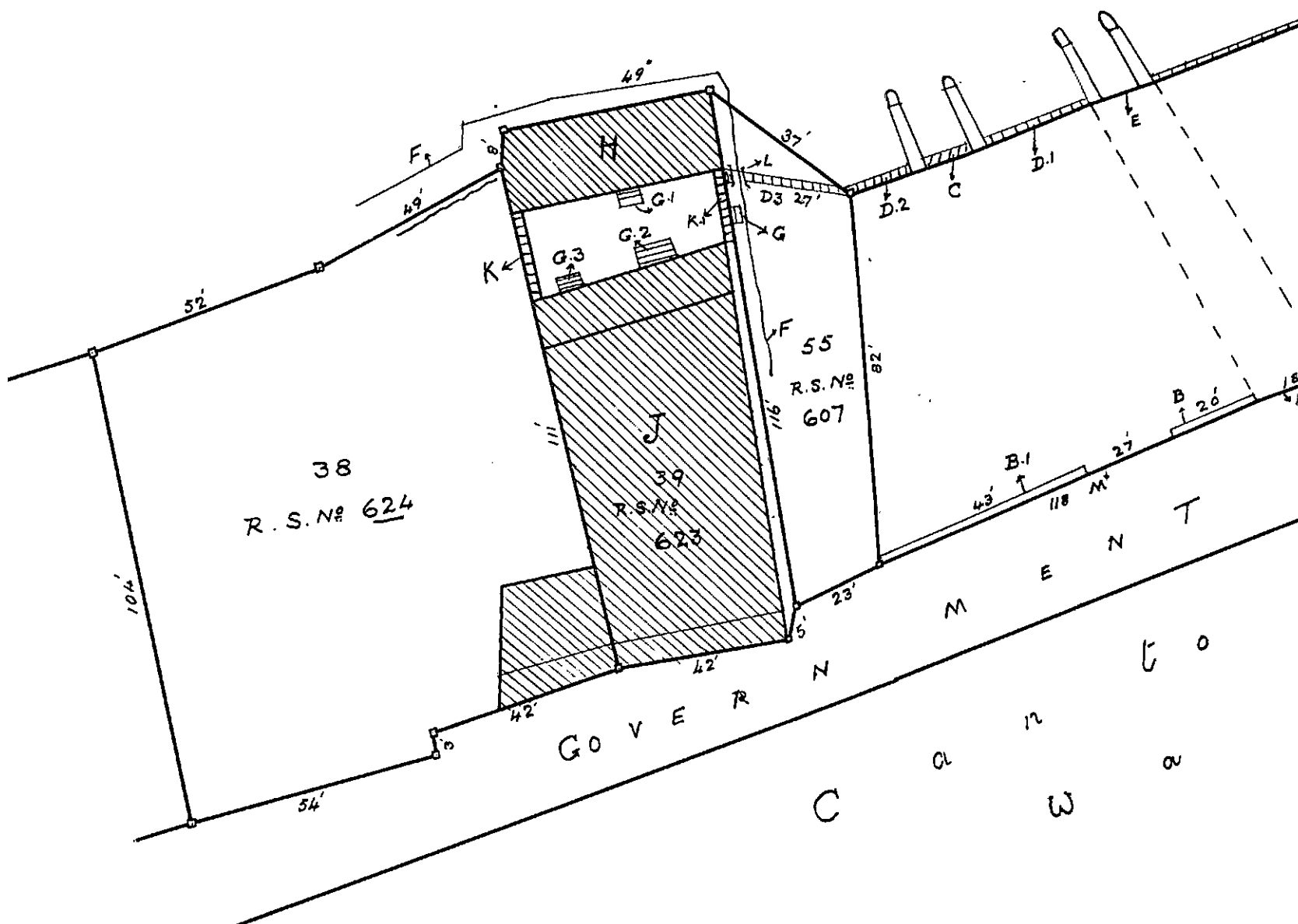
(True Copy)

Ambram

For Collector.

up
17.3.32

WENLOCK HOSPITAL FOR FEMALES



Village. Kasabazaar.

True to say

Choragafu

16/3/32

Huffman

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IN THE COURT OF THE DISTRICT MUNSIF OF MANGALORE.

O.S.No.32/1932.

R.I.A.No.79/1932.

Between

Mrs. Annie Pais and another

Plaintiffs-Petitioners.

and

The Secretary of State for India in
Council, represented by the Collector
of South Kanara.

Defendant-Respondent.

To

The above named Defendant (Respondent

Whereas the Plaintiffs abovenamed have applied by
R.I.A.No.79/1932 in the above suit for issue of a temporary
injunction restraining the Defendant from blocking or obstruct-
ing in any manner the road S.F.No.607 of Kasba Bazaar Village
leading to the Plaintiffs' godowns and other buildings standing
in S.F.No.623 of the said village, you and all persons claiming
through or under you are hereby restrained by a temporary -----
injunction from blocking or otherwise obstructing the said road
-way until the further orders of this Court Date of Hearing
1-4-1932.

Given under my hand and the seal of the Court this 2nd
day of February 1932 at Mangalore.

Sd/- P.Narayana Menon,
District Munsiff.

True Copy.

Am. S. S. S.

For Collector.

148
19.3.32

Letter from the Dt. Medical Officer, South Kanara, Mangalore.
 To the Collector of South Kanara, Mangalore.
 Dated 28-1-1932 Ref.No. 664-2/32.

Ref:- Your letter Ref.A.3-196-32 dated 8-1-1932,
 re. Land - Mangalore Taluk and Town - Kasba Bazaar
 village - S.No. 55 - Blocking up roadway -suit
 notice - etc.

I do not think that Messrs. Pais & Sons have got
 a right of passage. The proposal has all along been to
 enclose all the open space in front of the hospital including
 a tank at the corner of the road. The construction of the
 compound wall has already been taken up and is proceeding.
 It need not be stopped as a small portion of the wall can be
 demolished if Messrs. Pais & Sons prove their right later on.
 The Public Prosecutor's opinion is awaited in the matter and
 it will be communicated to you when received.

I may point out that Messrs. Pais & Sons have got a
 passage on the western side of their building by which lorries
 etc. can be easily taken to the back portion of their -----
 buildings.

(True copy)

A. K. S. S.

For Collector.

M. S.
 17.3.32

Ref.No. 1.
1932

17

M a n g a l o r e,

8th March 1932.

From

M.R.Ry. Dewan Bahadur B. Mahabala Hegde Avl., B.A., B.L.
Government Pleader & Public Prosecutor,
Mangalore.

To

The Collector,
South Kanara.

Sir,

Reference:- Svits - Mangalore - District Munsif's
Court - O.S.32/32.

Your letter Ref.A3 No.196-32 dated 4.3.1932.

I am enclosing herewith a draft written statement and a draft counter against the temporary injunction in O.S.32/32 on the file of the District Munsif of Mangalore.

In order that the plaintiffs might succeed, they have to establish not only that the road existed for the statutory period but also that the plaintiffs and their predecessors in title used that road, for the purposes and in the manner ----- alleged in the plaint, as of right and as an easement and --- that there existed all along the statutory period a passage or doorway in the place indicated by plaintiffs leading from the roadway to plaintiffs' buildings or premises. Further, even if plaintiffs are able to prove the existence of a roadway to the east of their buildings, unless they can establish that it was a 22 feet roadway all along should be kept even hereafter for their benefit. If it could be shown, that the plaintiffs or their predecessors used any other entrance, on the western side or anywhere else and that the present ----- entrance on the eastern side came into existence only after

-2- 102

plaintiffs put up the buildings somewhere in 1901, and -
that the old buildings had a different entrance than the
present one, then the plaintiffs' case may not stand. I
am therefore of opinion that it is a claim which may be
contested on behalf of the Government.

Connected papers are herewith returned.

Your obedient servant,

(Sd.) B.M. Hegde,

Government Pleader.

(True Copy)

Ailmer 17/8/07

For Collector.

16.3.07

19.

In the Court of the District Munsif of Mangalore

O.S.No.32/1932.

I.A. /1932.

Between

Mrs. Annie Pais and another

Plaintiffs

and

The Secretary of State for India

Defendant.

Counter filed on behalf of the defendant.

The defendant above named begs to state as follows:-

1. The application for injunction is not sustainable either in law or under the circumstances of this case.

2. It is denied that the plaintiffs have made out a prima facie case for the issue of injunction.

3. The grounds alleged in the affidavit in support of the application are neither true nor sufficient.

4. This defendant has filed a written statement in answer to plaintiffs' suit, and begs to refer to the same, in answer to the application for injunction.

5. It is denied that the roadway in question existed from time immemorial or that the plaintiffs have acquired a prescriptive right over the same, in the manner or to the extent alleged in the plaint or in the affidavit.

6. The further allegation that the plaintiffs' gate referred to in para 4 of the affidavit is an ancient one is also not true and is hereby denied

7. It is not admitted, that the roadway in question is the only way to lead to plaintiffs' premises. The correctness of allegations in paragraphs 5 and 6 of the affidavit is also denied. Plaintiffs have other entrances to their ---- premises.

8. It is not true that the roadway in question was at any time specially reserved for the benefit of plaintiffs' holding as stated in the affidavit.

9. It is denied that the roadway in question existed for over 60 years or that the plaintiffs have a right to ---

object to its being closed.

10. It is further denied that plaintiffs will ---
suffer any loss if the roadway is blocked. On the ----
other hand the comforts and conveniences of the Hospital
will suffer if the roadway is not blocked.

11. The correctness of allegations in paragraphs 10
(and) 12 of the affidavit is also denied.

12. The petition is vexatious and may be rejected
with costs.

Amherst 1732

For Collector.

48
17.3.12

In the Court of the Dt. Munsif of Mangalore.

O.S. 32/1932.

Between -

Mrs. Annie Pais and another ... Plaintiffs.

a n d

The Secretary of State for
India in Council, represented ... Defendants.
by the Collector of South
Kanara.

Written statement of defendant under Order VIII Rule 1
of C.F. Code.

The Defendant above named begs to state as follows.-

1. The suit is highly vexatious and speculative and is not sustainable at law.
2. This defendant is not aware of the plaint allegation that the plaintiffs are the Executrices of the Will of the late Mr. Martin Pais and puts plaintiffs to the strict proof of the same and of the plaintiffs' alleged right to maintain the suit in the said capacity.
3. This defendant is not aware of the correctness of the plaint allegations in para 3 (3) of the plaint, nor does he admit the truth of the same.
4. This defendant while admitting that T.S.55 of III Ward referred to in the plaint, is a poramboke road, does not admit the further allegations in the plaint, that the said road has along been used as such from time immemorial either by the Public or by the plaintiffs or their predecessors in title, tenants or servants, as a road-way for securing access to plaintiffs' land or buildings thereon, in the manner alleged in the plaint.
5. This defendant does not admit the plaint allegations that the said roadway has along been used by the plaintiffs or predecessors in title to cart materials, stones etc., to the buildings in the plaintiffs' land or to go to tenants' houses standing in the said plot, or that the said roadway has been used by the plaintiffs servants to go to their

back portion of their premises, to open and close the doors of buildings and godowns or by their coolies for making ----- periodical repairs, as stated in the plaint.

6. This defendant also denies the plaint allegations that the plaintiffs have acquired a right to use T.S.55 as a roadway to their property, for all or any of the purposes alleged in para 3 (5) of the plaint, by any implied grant as mentioned in the plaint or otherwise. This defendant does not further admit that the said road has been used by plaintiffs and their predecessors in title, for any of the plaint mentioned purpose, as of right, openly and without any interruption and continuously for over the statutory or prescriptive period or that the plaintiffs have acquired any prescriptive right for the said road, as ---- contended by the plaintiffs. Further, it is not admitted that the said road was in present condition or magnitude before or that it existed for over 60 years.

7. The plaint allegations, that the plaintiffs' gateway is an ancient one is denied and the further allegation that the plaintiffs have no other ways for the purposes set out in the plaint para 3 (5) is not true and is hereby denied, and the plaintiffs omission to refer to the existence of a passage, on the western side, is not justifiable. It is also denied that the plaintiffs have acquired any easement of necessity for all or any of the purposes mentioned in the plaint. Further, there are no circumstances, which would justify any claim to any ---- easement of necessity, and the plaintiffs' claim based on that ground is not legally-sustainable. and in any event, the plaintiffs are not entitled to any easement of necessity to the ---- extent and on the mode claimed by them.

8. This defendant denies that the alleged assertion of rights referred to in para 3(6) of the plaint can be relied upon by the plaintiffs for the purpose of this suit, or that they confer any right to the plaintiffs. Further, the inference sought to be drawn by the plaintiffs from the wall marked D 3

and other matters referred to by the plaintiffs are neither true nor justifiable. /

9. The action of the Municipality in making over the roadway in question to this defendant is not open to the plaint mentioned objection, nor are the plaintiffs entitled to question the validity of the same. Further, formalities have been observed and publications in the Gazette in that behalf have been duly made.

10. It is not disputed that it is intended to add the roadway in question to the Hospital grounds and to block the roadway at -- the place where it joins the main public road, by putting up a stone wall at the entrance, as it is considered to be necessary for purposes of the Hospital and the plaintiffs have no manner of right whatsoever, to question the same, nor does it in any way affect -- their rights.

11. This defendant while admitting the facts stated in plaint para 3(8) submits that the original order reserving a strip of land 12 feet broad was cancelled, as the said reservation was considered to be quite unnecessary and prejudicial for the conveniences and comforts of the Hospital. /

12. This defendant does not admit the validity or sufficiency of the notice sent by plaintiffs and submits that the suit is bad for want of a due and valid notice as required by section 80 of C.P.Code.

13. The plaint allegation that the blocking of the road causes particular direct and substantial damage as alleged and that the denial of plaintiffs' right or the blocking of the road is wrongful and tortuous are not true and are hereby denied.

14. The cause of action is not correctly stated in the plaint and the plaint claim is barred by limitation and the suit is not in time.

15. The plaintiffs are not entitled to injunction or to any of the reliefs claimed in the plaint. In any event plaintiffs are not entitled to injunction to the extent and in the manner claimed by them in the plaint.

16. This defendant does not admit the correctness of other allegations in the plaint, which are not expressly admitted or denied herein. Prays therefore that the suit may be dismissed with costs.

A. K. Kulkarni (17/3/77)
For Collector.

Sub
17.3.77

R. F. X X M-A-19-80,004-2-2-31 (6)

FOR MEMBER.

with local representation
and an accompanying 1034